

AMENDED IN SENATE APRIL 17, 2012

AMENDED IN SENATE APRIL 16, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 1058

Introduced by Senator Lieu

February 13, 2012

An act to amend Sections 1502 and 2117 of, to add Chapter 22.5 (commencing with Section 2280) to Division 1 of Title 1 of, and to repeal Section 1502.5 of, the Corporations Code, relating to the Victims of Corporate Fraud Compensation Fund.

LEGISLATIVE COUNSEL'S DIGEST

SB 1058, as amended, Lieu. Victims of Corporate Fraud Compensation Fund.

Existing law establishes the Victims of Corporate Fraud Compensation Fund, a continuously appropriated fund, within the State Treasury administered by the Secretary of State, the sole purpose of which is to provide restitution to victims of corporate fraud.

This bill would revise and recast those provisions, including eliminating the requirement that the Secretary of State adopt those regulations. The bill would provide that an aggrieved person who obtains a final judgment, as specified, against a corporation based upon the corporation's fraud, misrepresentation, or deceit, made with intent to defraud, may file an application with the Secretary of State for payment from the fund for the amount unpaid on the judgment that represents ~~an~~ *the awarded* actual and direct loss to the claimant in the ~~transaction~~ *final judgment*. The bill would limit the amount to be paid from the fund ~~for any one action by a corporation to \$20,000, with respect to~~

applications filed before January 1, 2013, and \$50,000; with respect to applications filed on or after January 1, 2013 any one claimant, as specified.

This bill would require a claimant to apply for restitution on a form prescribed by the Secretary of State including specified information and representations. The bill would establish procedures for the Secretary of State in determining whether a claim shall be paid, including giving written notice to the claimant and the corporation, as specified. The bill would prescribe procedures for judicial review of a denied claim. *The bill would require a corporation to reimburse the fund and pay interest for any payment made from the fund by the Secretary of State in settlement of a claim or toward satisfaction of a final judgment against the corporation, as specified.* The bill would make it a crime to file a document under these provisions that is false or contains willful, material misstatements. The bill would make conforming changes.

Because this bill would create new crimes, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1502 of the Corporations Code is
- 2 amended to read:
- 3 1502. (a) Every corporation shall file, within 90 days after the
- 4 filing of its original articles and annually thereafter during the
- 5 applicable filing period, on a form prescribed by the Secretary of
- 6 State, a statement containing all of the following:
- 7 (1) The name of the corporation and the Secretary of State's
- 8 file number.
- 9 (2) The names and complete business or residence addresses of
- 10 its incumbent directors.
- 11 (3) The number of vacancies on the board, if any.

1 (4) The names and complete business or residence addresses of
2 its chief executive officer, secretary, and chief financial officer.

3 (5) The street address of its principal executive office.

4 (6) The mailing address of the corporation, if different from the
5 street address of its principal executive office.

6 (7) If the address of its principal executive office is not in this
7 state, the street address of its principal business office in this state,
8 if any.

9 (8) If the corporation chooses to receive renewal notices and
10 any other notifications from the Secretary of State by electronic
11 mail instead of by United States mail, the corporation shall include
12 a valid electronic mail address for the corporation or for the
13 corporation's designee to receive those notices.

14 (9) A statement of the general type of business that constitutes
15 the principal business activity of the corporation (for example,
16 manufacturer of aircraft; wholesale liquor distributor; or retail
17 department store).

18 (b) The statement required by subdivision (a) shall also
19 designate, as the agent of the corporation for the purpose of service
20 of process, a natural person residing in this state or a corporation
21 that has complied with Section 1505 and whose capacity to act as
22 an agent has not terminated. If a natural person is designated, the
23 statement shall set forth that person's complete business or
24 residence street address. If a corporate agent is designated, no
25 address for it shall be set forth.

26 (c) If there has been no change in the information in the last
27 filed statement of the corporation on file in the Secretary of State's
28 office, the corporation may, in lieu of filing the statement required
29 by subdivisions (a) and (b), advise the Secretary of State, on a
30 form prescribed by the Secretary of State, that no changes in the
31 required information have occurred during the applicable filing
32 period.

33 (d) For the purposes of this section, the applicable filing period
34 for a corporation shall be the calendar month during which its
35 original articles were filed and the immediately preceding five
36 calendar months. The Secretary of State shall provide a notice to
37 each corporation to comply with this section approximately three
38 months prior to the close of the applicable filing period. The notice
39 shall state the due date for compliance and shall be sent to the last
40 address of the corporation according to the records of the Secretary

1 of State or to the last electronic mail address according to the
2 records of the Secretary of State if the corporation has elected to
3 receive notices from the Secretary of State by electronic mail. The
4 failure of the corporation to receive the notice is not an excuse for
5 failure to comply with this section.

6 (e) Whenever any of the information required by subdivision
7 (a) is changed, the corporation may file a current statement
8 containing all the information required by subdivisions (a) and
9 (b). In order to change its agent for service of process or the address
10 of the agent, the corporation must file a current statement
11 containing all the information required by subdivisions (a) and
12 (b). Whenever any statement is filed pursuant to this section, it
13 supersedes any previously filed statement and the statement in the
14 articles as to the agent for service of process and the address of
15 the agent.

16 (f) The Secretary of State may destroy or otherwise dispose of
17 any statement filed pursuant to this section after it has been
18 superseded by the filing of a new statement.

19 (g) This section shall not be construed to place any person
20 dealing with the corporation on notice of, or under any duty to
21 inquire about, the existence or content of a statement filed pursuant
22 to this section.

23 (h) The statement required by subdivision (a) shall be available
24 and open to the public for inspection. The Secretary of State shall
25 provide access to all information contained in this statement by
26 means of an online database.

27 (i) In addition to any other fees required, a corporation shall
28 pay a five-dollar (\$5) disclosure fee when filing the statement
29 required by subdivision (a). One-half of the fee shall be utilized
30 to further the provisions of this section, including the development
31 and maintenance of the online database required by subdivision
32 (h), and one-half shall be deposited into the Victims of Corporate
33 Fraud Compensation Fund established in Section 2280.

34 (j) A corporation shall certify that the information it provides
35 pursuant to subdivisions (a) and (b) is true and correct. No claim
36 may be made against the state for inaccurate information contained
37 in the statements.

38 SEC. 2. Section 1502.5 of the Corporations Code is repealed.

39 SEC. 3. Section 2117 of the Corporations Code is amended to
40 read:

1 2117. (a) Every foreign corporation (other than a foreign
2 association) qualified to transact intrastate business shall file,
3 within 90 days after the filing of its original statement and
4 designation of foreign corporation and annually thereafter during
5 the applicable filing period, on a form prescribed by the Secretary
6 of State, a statement containing the following:

7 (1) The name of the corporation as registered in California and
8 the California Secretary of State's file number.

9 (2) The names and complete business or residence addresses of
10 its chief executive officer, secretary, and chief financial officer.

11 (3) The street address of its principal executive office.

12 (4) The mailing address of the corporation, if different from the
13 street address of its principal executive office.

14 (5) The street address of its principal business office in this
15 state, if any.

16 (6) If the corporation chooses to receive renewal notices and
17 any other notifications from the Secretary of State by electronic
18 mail instead of by United States mail, the corporation shall include
19 a valid electronic mail address for the corporation or for the
20 corporation's designee to receive those notices.

21 (7) A statement of the general type of business that constitutes
22 the principal business activity of the corporation (for example,
23 manufacturer of aircraft; wholesale liquor distributor; or retail
24 department store).

25 (b) The statement required by subdivision (a) shall also
26 designate, as the agent of the corporation for the purpose of service
27 of process, a natural person residing in this state or a corporation
28 that has complied with Section 1505 and whose capacity to act as
29 the agent has not terminated. If a natural person is designated, the
30 statement shall set forth the person's complete business or
31 residence street address. If a corporate agent is designated, no
32 address for it shall be set forth.

33 (c) The statement required by subdivision (a) shall be available
34 and open to the public for inspection. The Secretary of State shall
35 provide access to all information contained in the statement by
36 means of an online database.

37 (d) In addition to any other fees required, a foreign corporation
38 shall pay a five-dollar (\$5) disclosure fee upon filing the statement
39 required by subdivision (a). One-half of the fee shall be utilized
40 to further the provisions of this section, including the development

1 and maintenance of the online database required by subdivision
2 (d), and one-half shall be deposited into the Victims of Corporate
3 Fraud Compensation Fund established in Section 2280.

4 (e) Whenever any of the information required by subdivision
5 (a) is changed, the corporation may file a current statement
6 containing all the information required by subdivisions (a) and
7 (b). In order to change its agent for service of process or the address
8 of the agent, the corporation shall file a current statement
9 containing all the information required by subdivisions (a) and
10 (b). Whenever any statement is filed pursuant to this section, it
11 supersedes any previously filed statement and the statement in the
12 filing pursuant to Section 2105.

13 (f) Subdivisions (c), (d), (f), and (g) of Section 1502 apply to
14 statements filed pursuant to this section, except that “articles” shall
15 mean the filing pursuant to Section 2105, and “corporation” shall
16 mean a foreign corporation.

17 SEC. 4. Chapter 22.5 (commencing with Section 2280) is added
18 to Division 1 of Title 1 of the Corporations Code, to read:

19
20 CHAPTER 22.5. VICTIMS OF CORPORATE FRAUD COMPENSATION
21 FUND
22

23 2280. The Victims of Corporate Fraud Compensation Fund is
24 hereby established in the State Treasury. The fund shall be
25 administered by the Secretary of State for the sole purpose of
26 providing restitution to the victims of a corporate fraud. The
27 Secretary of State shall adopt regulations in furtherance of the
28 administration of this chapter. Notwithstanding Section 13340 of
29 the Government Code, the money in the fund is continuously
30 appropriated to the Secretary of State for the purposes authorized
31 by this chapter.

32 2281. As used in this chapter:

33 (a) “Application” means a request for payment from the fund
34 submitted to the Secretary of State pursuant to this chapter.

35 (b) “Claimant” means an aggrieved person who resides in the
36 state at the time of the fraud and who submits an application
37 pursuant to this chapter.

38 (c) “Complaint,” for the purpose of an application based on a
39 criminal restitution order, means the facts of the underlying
40 transaction upon which the criminal restitution order is based.

1 (d) “Corporation” means a domestic corporation as defined by
2 Section 162 or 2509 or a foreign corporation that is qualified to
3 transact business in California pursuant to Section 2105.

4 (e) “Court of competent jurisdiction” means a small claims;
5 ~~municipal~~, or superior court of any state, or a United States district
6 court or United States bankruptcy court.

7 (f) “Final judgment” means a judgment, arbitration award, or
8 criminal restitution order for which the period for appeal has
9 expired, enforcement of which is not barred by the order of any
10 court or by any statutory provision, ~~and which has not been~~
11 ~~nullified or rendered void by any court order or statutory provision,~~
12 ~~and the claimant has not otherwise been fully reimbursed. Final~~
13 ~~judgments shall include each of the following. The following are~~
14 ~~examples of final judgments:~~

15 ~~(1) Any findings of fact, conclusions of law, jury verdicts, jury~~
16 ~~special verdicts, statements of decision, memorandum decisions,~~
17 ~~or any other indication by a court or jury, as the case may be, of~~
18 ~~its decision and the reasons for the decision.~~

19 ~~(1) A civil judgment that has been entered against a corporation~~
20 ~~for intentional fraud and includes findings of facts and conclusions~~
21 ~~of law.~~

22 (2) If the matter was submitted to arbitration, a copy of the
23 arbitration decision and any other documentation supporting the
24 arbitration award. An arbitration award *against a corporation for*
25 *conduct constituting intentional fraud* that includes findings of
26 fact and conclusions of law rendered in accordance with the rules
27 established by the American Arbitration Association or another
28 recognized arbitration body, and in accordance with Sections 1280
29 to 1294.2, inclusive, of the Code of Civil Procedure where
30 applicable, and where the arbitration award has been confirmed
31 and reduced to judgment pursuant to Section 1287.4 of the Code
32 of Civil Procedure.

33 (3) A criminal restitution order issued *by a court of competent*
34 *jurisdiction against a corporation for intentional fraud* pursuant
35 to subdivision (f) of Section 1202.4 of the Penal Code or Section
36 3663 of Title 18 of the United States Code. An application for
37 payment from the fund that is based on a criminal restitution order
38 shall comply with all of the requirements of this chapter.

39 (g) “Fund” means the Victims of Corporate Fraud Compensation
40 Fund created by Section 2280.

1 (h) “Judgment,” for purposes of an application based on a
2 criminal restitution order, means the criminal restitution order.

3 2282. (a) When an aggrieved person obtains a final judgment
4 in a court of competent jurisdiction against a corporation based
5 upon the corporation’s fraud, misrepresentation, or deceit, made
6 with intent to defraud, the aggrieved person may, upon the
7 judgment becoming final, file an application with the Secretary of
8 State for payment from the fund, within the limitations specified
9 in Section 2289, for the amount unpaid on the judgment that
10 represents ~~an~~ *the awarded* actual and direct loss ~~and~~, any *awarded*
11 compensatory damages, *and* awarded *costs* to the claimant in the
12 ~~transaction~~ *final judgment*, excluding punitive damages.

13 (b) The application shall be delivered in person or by certified
14 mail to the Secretary of State not later than 18 months after the
15 judgment has become final.

16 (c) The application shall be made on a form prescribed by the
17 Secretary of State, ~~shall contain a statement that the information~~
18 ~~provided is true and accurate to the best of the claimant’s belief,~~
19 and shall include each of the following:

20 (1) The name and address of the claimant.

21 (2) If the claimant is represented by an attorney for the
22 application, the name, business address, and telephone number of
23 the attorney. If the claimant is not represented by an attorney for
24 the application, a telephone number where the claimant can be
25 reached during regular business hours shall be included.

26 (3) The name and address of the corporation.

27 (4) The identification of the final judgment, the amount of the
28 claim *that remains unreimbursed from any source*, and an
29 explanation of the claim’s computation.

30 (5) A detailed narrative statement of the facts in explanation of
31 the allegations of the complaint upon which the underlying
32 judgment is based. A copy of a judgment that specifies the facts
33 of the allegations of the complaint shall be deemed to satisfy
34 compliance with the requirements prescribed in this paragraph.

35 (6) Each of the following representations by, and information
36 pertaining to, the claimant:

37 (A) ~~That he or she~~ *the claimant* is not a spouse *or an immediate*
38 *family member* of an employee, officer, director, managing agent,
39 *or other principal* of the corporation nor a personal representative
40 of the spouse *or an immediate family member of an employee,*

1 *officer, director, managing agent, or other principal of the*
2 *corporation.*

3 (B) That ~~he or she~~ *the claimant* has complied with all of the
4 requirements of this chapter.

5 (C) That the judgment underlying the claim meets the
6 requirements of Section 2282.

7 (D) A description of searches and inquiries conducted by or on
8 behalf of the claimant with respect to the corporation's assets liable
9 to be sold or applied to satisfaction of the judgment. A court's
10 determination or finding of the corporation's insolvency or lack
11 of assets to pay the claimant shall be deemed to satisfy the
12 requirements prescribed in this subparagraph.

13 (E) That the underlying judgment and debt have not been
14 discharged in bankruptcy, or the underlying judgment is statutorily
15 nondischargeable, or, in the case of a bankruptcy proceeding that
16 is open at or after the time of the filing of the application, that the
17 judgment and debt have been declared to be nondischargeable.

18 (F) A copy of the final judgment and a copy of the civil
19 complaint upon which the judgment for intentional fraud was
20 issued. If one or more amendments or amended complaints were
21 filed, a copy of all amendments and all prior versions of the
22 complaint shall be submitted by the claimant.

23 (G) *That claimant does not have a pending claim and has not*
24 *collected on the final judgment from any other restitution fund. If*
25 *the claimant has a pending claim or has collected from another*
26 *fund, a description of the nature of the pending claim and the*
27 *recovery amounts from any restitution fund.*

28 ~~(G)~~

29 (H) That the application was mailed or delivered to the Secretary
30 of State no later than 18 months after the underlying judgment
31 became final.

32 ~~(d) (1) Notwithstanding paragraph~~ *Except as provided in*
33 *paragraphs (2), (3), and (4) the Secretary of State shall not*
34 *condition an award of payment from the fund upon a claimant*
35 *providing any additional information or documents other than*
36 *those prescribed in this section.*

37 (2) If the final judgment in favor of the claimant was by default,
38 stipulated, a consent judgment, or pursuant to Section 594 of the
39 Code of Civil Procedure or if the action against the corporation
40 was defended by a trustee in bankruptcy, the Secretary of State

1 may request additional documents and information from the
2 claimant to determine whether the claim is valid.

3 (3) *If the final judgment does not expressly set forth that there*
4 *has been a finding of fraud or the amount of damages that were*
5 *awarded for actual loss and compensatory damages that are*
6 *payable from the fund pursuant to Section 2289, the Secretary of*
7 *State may ask the claimant to provide copies of documentation to*
8 *support a finding of fraud or the amount of the actual and direct*
9 *loss and the awarded compensatory damages or both of those*
10 *findings. For purposes of this section, “sufficient proof of money*
11 *damages” may include any of the following: copies of bank account*
12 *statements showing or confirming particular transactions, copies*
13 *of the front and back of checks made payable to the judgment*
14 *debtor that have been negotiated, credit card statements showing*
15 *or confirming particular transactions, or similar documentation*
16 *demonstrating financial loss directly resulting from the fraudulent*
17 *acts by the judgment debtor and the amount of compensatory*
18 *damages awarded by the court.*

19 (4) *If there is no court determination or finding of the*
20 *corporation’s insolvency or lack of assets to pay the claimant, the*
21 *Secretary of State may request additional information and*
22 *documentation from the claimant to determine what assets, if any*
23 *are available to satisfy the final judgment.*

24 (e) The Secretary of State shall include with the application
25 form a notice to the claimant of his or her obligation to protect the
26 underlying judgment from discharge in bankruptcy, to be appended
27 to the application.

28 2282.1. (a) *The Secretary of State shall provide notice to the*
29 *judgment debtor that a claimant has submitted an application for*
30 *payment from the fund and shall also provide within that notice,*
31 *as prescribed by the Secretary of State, the method to contest the*
32 *payment from the fund.*

33 (b) *The notice shall be provided by certified mail addressed to*
34 *the corporation's last designated agent for service of process of*
35 *record with the Secretary of State and notice is complete five*
36 *calendar days after mailing.*

37 (c) *If the corporation wishes to contest payment of an*
38 *application by the Secretary of State, the corporation shall mail*
39 *or deliver a written response addressed to the Secretary of State*
40 *within 30 calendar days of the notice of the application, and shall*

1 *mail or deliver a copy of the response to the claimant. The written*
2 *response of the corporation shall not be directed to issues and*
3 *facts conclusively established by the underlying judgment. If the*
4 *corporation fails to mail or deliver a timely response, the*
5 *corporation shall have waived the corporation's right to present*
6 *objections to payment of the application, and shall not thereafter*
7 *be entitled to notice of any action taken or proposed to be taken*
8 *by the Secretary of State with respect to the application.*

9 2282.2. (a) *The response by the corporation shall be by an*
10 *officer or director and shall contain proof of service showing that*
11 *a copy of the response was sent to the claimant, or if the claimant*
12 *is represented by an attorney for purposes of the application, to*
13 *the claimant's attorney, at the address specified in the application*
14 *for the claimant or the claimant's attorney, respectively.*

15 (b) *If the corporation is not represented by an attorney in*
16 *objecting to payment of the application, the response shall contain*
17 *the name, title, and address of the officer, director, managing*
18 *agent, or other responsible person authorized to represent the*
19 *corporation and the address at which the corporation wishes to*
20 *receive correspondence and notices relating to the application,*
21 *and a telephone number at which the corporation's representative*
22 *can be reached during regular business hours. If the corporation*
23 *is represented by an attorney in objecting to the application, the*
24 *response shall contain the name, business address, and telephone*
25 *number of the attorney.*

26 2283. (a) *If the Secretary of State determines that the*
27 *application, as submitted by the claimant, fails to comply with the*
28 *requirements of Section 2282, the Secretary of State shall, within*
29 *15 21 calendar days after receipt of the application by a single*
30 *claimant or within 40 calendar days after receipt of the application*
31 *by multiple claimants, mail an itemized list of deficiencies to the*
32 *claimant.*

33 (b) *The time within which the Secretary of State is required to*
34 *act under Section 2284 shall be measured from the date of receipt*
35 *by the Secretary of State of an a completed application. In the*
36 *event of an irreconcilable dispute between the claimant and the*
37 *Secretary of State on the question of whether the application is*
38 *complete, the claimant may immediately file the claim with the*
39 *court pursuant to Section 2287.*

1 (c) *If the Secretary of State has mailed one or more itemized*
2 *lists of deficiencies to a claimant, and, if after 30 calendar days*
3 *the Secretary of State has not received a response to the latest list*
4 *of deficiencies, the Secretary of State may notify the claimant that*
5 *unless the claimant responds to the deficiencies within a specified*
6 *period of time of not less than 15 calendar days, that the*
7 *application will be denied.*

8 2284. (a) The Secretary of State shall render a final written
9 decision on the application within 90 *calendar* days after a
10 completed application has been received unless the claimant agrees
11 in writing to extend the time within which the Secretary of State
12 may render a decision.

13 (b) The Secretary of State may deny or grant the application or
14 may enter into a compromise with the claimant to pay less in
15 settlement than the full amount of the claim. If the claimant refuses
16 to accept a settlement of the claim offered by the Secretary of
17 State, the written decision of the Secretary of State shall be to deny
18 the claim. Evidence of settlement offers and discussions between
19 the Secretary of State and the claimant shall not be competent
20 evidence in judicial proceedings undertaken by the claimant
21 pursuant to Section 2287.

22 (c) *Upon issuance of a proposed decision to award payment or*
23 *an offer to compromise, the claimant shall have 60 calendar days*
24 *from the date of service of the proposed award or offer to*
25 *compromise to accept the proposed award or offer to compromise.*
26 *If the claimant fails to accept the proposed award or offer to*
27 *compromise within the specified time, the application shall be*
28 *deemed denied.*

29 2285. ~~(a)~~ The Secretary of State shall give written notice, *as*
30 *prescribed by the Secretary of State*, of a decision rendered with
31 respect to the application to the claimant.

32 ~~(b) If the application is denied, the notice to the claimant shall~~
33 ~~include the following statement:~~

34
35 ~~“Claimant’s application has been denied. If the claimant wishes~~
36 ~~to pursue the application in court, the claimant shall file the petition~~
37 ~~as follows in a superior court of this state not later than six months~~
38 ~~after receipt of this notice. If the underlying judgment is a~~
39 ~~California state court judgment, the petition shall be filed in the~~
40 ~~court in which the underlying judgment was entered. If the~~

1 underlying judgment is not a California state court judgment or is
2 a federal court judgment, the petition shall be filed in any superior
3 court of any county within California that would have been a proper
4 venue if the underlying lawsuit had been filed in a California state
5 court, or in the Superior Court of the County of Sacramento.”
6

7 2286. (a) The Secretary of State shall give notice, as prescribed
8 ~~in subdivision (b) by the Secretary of State~~, to the corporation that
9 the Secretary of State has made a decision to award funds to the
10 claimant and shall provide a copy of the decision to the corporation.

11 (b) ~~The notice served upon the corporation shall include the~~
12 ~~following statement:~~
13

14 “NOTICE: Based upon a judgment entered against (Name of
15 Corporation) in favor of (Name of Claimant), an application for
16 payment from the Victims of Corporate Fraud Compensation Fund
17 has been made to the Secretary of State.

18 The decision of the Secretary of State on the application of
19 (Name of Claimant) is to pay \$ (Dollar Amount) from the Victims
20 of Corporate Fraud Compensation Fund. A copy of that decision
21 is enclosed.

22 Pursuant to Section 2293 of the Corporations Code, the Secretary
23 of State has assumed the claimant’s interest in the judgment against
24 the corporation and has the authority to pursue damages against
25 the corporation’s officers, directors, and shareholders for the
26 judgment amount paid to the claimant.”
27

28 2287. (a) A claimant against whom the Secretary of State has
29 rendered a decision denying an application may, within six months
30 after the mailing of the notice of the denial, file a verified petition
31 in superior court for an Order Directing Payment Out of the
32 Victims of Corporate Fraud Compensation Fund based upon the
33 grounds set forth in the application to the Secretary of State. If the
34 underlying judgment is a California state court judgment, the
35 petition shall be filed in the court in which the underlying judgment
36 was entered. If the underlying judgment is not a California state
37 court judgment or is a federal court judgment, the petition shall
38 be filed in the superior court of any county within California that
39 would have been a proper venue if the underlying lawsuit had been

1 filed in a California state court, or in the Superior Court of the
2 County of Sacramento.

3 (b) A copy of the petition shall be served upon the Secretary of
4 State by the claimant. A certificate or affidavit of service shall be
5 filed by the claimant with the court. Service on the Secretary of
6 State may be made by mail addressed to the Secretary of State's
7 office.

8 (c) The Secretary of State shall have 30 *calendar* days after
9 being served with the petition in which to file a written response.
10 The court shall thereafter set the matter for hearing upon the
11 petition of the claimant. The court shall grant a request of the
12 Secretary of State for a continuance of as much as 30 *calendar*
13 days and may, upon a showing of good cause by any party,
14 continue the hearing as the court deems appropriate.

15 (d) The claimant shall have the burden of proving compliance
16 with the requirements of Section 2282 by competent evidence at
17 an evidentiary hearing. The claimant shall be entitled to a de novo
18 review of the merits of the application as contained in the
19 administrative record.

20 (e) At any time during the court proceedings, the petition may
21 be compromised or settled by the Secretary of State and the court
22 shall, upon joint petition of the claimant and the Secretary of State,
23 issue an order directing payment out of the fund.

24 2288. (a) Whenever the court proceeds upon a petition under
25 Section 2287, it shall order payment out of the fund only upon a
26 determination that the aggrieved party has a valid cause of action
27 within the purview of Section 2282, and has complied with Section
28 2287.

29 (b) (1) The Secretary of State may defend any action on behalf
30 of the fund and shall have recourse to all appropriate means of
31 defense and review, including examination of witnesses and the
32 right to relitigate any issues that are material and relevant in the
33 proceeding against the fund and that were determined in the
34 underlying action on which the judgment in favor of the claimant
35 was based. The claimant's judgment shall create a rebuttable
36 presumption of the fraud, misrepresentation, or deceit by the
37 corporation, which presumption shall affect the burden of
38 producing evidence.

39 (2) *If the civil judgment, arbitration award, or criminal*
40 *restitution order in the underlying action on which the final*

1 *judgment in favor of the petitioner was by default, stipulation,*
2 *consent or pursuant to Section 594 of the Code of Civil Procedure,*
3 *or if the action against the corporation was defended by a trustee*
4 *in bankruptcy, the petitioner shall have the burden of proving that*
5 *the cause of action against the corporation was for fraud,*
6 *misrepresentation, or deceit.*

7 (c) The Secretary of State may move the court at any time to
8 dismiss the petition when it appears there are no triable issues and
9 the petition is without merit. The motion may be supported by
10 affidavit of any person or persons having knowledge of the facts,
11 and may be made on the basis that the petition, and the judgment
12 referred to therein, does not form the basis for a meritorious
13 recovery claim within the purview of Section 2282; provided,
14 however, the Secretary of State shall give written notice at least
15 10 *calendar* days before *hearing on* the motion to the claimant.

16 2289. (a) Notwithstanding any other provision of this chapter
17 and regardless of the number of persons aggrieved in an instance
18 of corporate fraud, or misrepresentation or deceit resulting in a
19 judgment meeting the requirements of Section 2282, or the number
20 of judgments against a corporation, the liability of the fund shall
21 not exceed ~~the following amounts:~~ *fifty thousand dollars (\$50,000)*
22 *for any one claimant regardless of the number of corporations.*

23 ~~(a) For applications for payment from the fund filed before~~
24 ~~January 1, 2013, twenty thousand dollars (\$20,000) for any one~~
25 ~~action by a corporation.~~

26 ~~(b) For applications for payment from the fund filed on or after~~
27 ~~January 1, 2013, fifty thousand dollars (\$50,000) for any one action~~
28 ~~by a corporation.~~

29 (e)
30 (b) When multiple corporations are involved in the same event
31 or series of events that are the basis of the claimant's final judgment
32 and the conduct of two or more of the corporations results in a
33 judgment meeting the requirements of Section 2282, the claimant
34 may seek recovery from the fund based on the judgment against
35 any *one* of the corporations, subject to the limitations of
36 ~~subdivisions subdivision (a) and (b).~~

37 ~~(d)~~
38 (c) When multiple claimants are involved in a corporate fraud,
39 or in misrepresentation or deceit by a corporation, resulting in a
40 judgment meeting the requirements of Section 2282, each claimant

1 may seek recovery from the fund individually, subject to the
2 limitations of ~~subdivisions~~ *subdivision* (a) ~~and (b)~~.

3 (e)

4 (d) Claimants who are spouses, registered domestic partners,
5 or persons other than natural persons, that have obtained an eligible
6 final judgment shall be considered one claimant.

7 2290. If, at any time, the money deposited in the fund is
8 insufficient to satisfy any duly authorized award or ~~portion thereof~~
9 *offer of settlement*, the Secretary of State shall, when sufficient
10 money has been deposited in the fund, satisfy the unpaid awards
11 or ~~portions thereof~~ *offer of settlement*, in the order that the awards
12 or portions thereof were originally filed, plus accumulated interest
13 at the rate of 4 percent per year.

14 2291. Any sums received by the Secretary of State pursuant
15 to any provisions of this chapter shall be deposited in the State
16 Treasury and credited to the fund.

17 2292. It shall be unlawful for any person or the agent of any
18 person to file with the Secretary of State any notice, statement, or
19 other document required under the provisions of this chapter that
20 is false or untrue or contains any willful, material misstatement of
21 fact. That conduct shall constitute a public offense punishable by
22 imprisonment in a county jail for a period of not more than one
23 year or a fine of not more than one thousand dollars (\$1,000), or
24 both.

25 2293. When the Secretary of State has paid from the fund any
26 sum to the claimant, the Secretary of State shall be subrogated to
27 all of the rights of the claimant and the claimant shall assign all of
28 his or her right, title, and interest in the judgment to the Secretary
29 of State and any amount and interest so recovered by the Secretary
30 of State on the judgment shall be deposited in the fund.

31 2293.1. *If the Secretary of State pays from the fund any amount*
32 *in settlement of a claim or toward satisfaction of a final judgment*
33 *against a corporation, the corporation shall be required to pay to*
34 *the fund the amount paid plus interest at the prevailing legal rate*
35 *applicable to a judgment rendered in any court of this state, within*
36 *30 calendar days of the date the Secretary of State provides notice*
37 *of the payment of the award or compromise. If the corporation*
38 *fails to make the required payment to the fund within the required*
39 *time, the corporation shall be suspended until the payment is made.*

1 *A discharge in bankruptcy shall not relieve a corporation from*
2 *the penalties and disabilities provided in this chapter.*

3 2294. The Secretary of State shall not make any award to a
4 claimant from the fund if the claimant has received payment from
5 any of the state's other restitution funds *or for the portions of the*
6 *judgment that the claimant has collected from the corporation or*
7 *any other defendant in the underlying judgment.*

8 2295. The failure of an aggrieved person to comply with all of
9 the provisions of this chapter shall constitute a waiver of any rights
10 hereunder.

11 SEC. 5. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.